



National District Attorneys Association  
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**Adolescent Brain**  
**Distance Learning Track**  
**September 30, 2003**

**The National District Attorneys Association (NDAA) and the U.S. Department of Justice (DOJ) are presenting this program today to allow greater distribution of these topics, and to better assess the feasibility of using distance learning to expand the audience NDAA serves in the future.**

**When this event was announced last month, it was our intention to use the DOJ's Justice Television Network (JTN) to broadcast one day of the program to as many as two hundred locations nationwide. However, on September 19<sup>th</sup> the communications satellite that supported the JTN suddenly ceased to operate. This equipment failure has interrupted broadcasting from the National Advocacy Center, since all of the receiver dishes which service U.S. Attorneys Offices have to be manually redirected to a new satellite. We anticipate that the JTN will be fully operational again by October 15<sup>th</sup>.**

**We have reduced the scope of today's presentation to approximately 12 sites since we are relying on a video bridge rather than a satellite for program distribution. We are hopeful that once JTN service is fully restored, today's program can be rebroadcast to the original intended audience.**

**We appreciate your attendance and participation. Please complete an evaluation at the end of the day; your assessment of today's program is important to us in planning future events.**



**The Adolescent Brain:  
*Helping Prosecutors Address Psychiatric Evaluations  
and Competency Challenges***

**Course Agenda**

**September 29-October 3, 2003**

**Ernest F. Hollings National Advocacy Center  
Columbia, South Carolina**

**Monday, September 29, 2003**

- |                            |  |
|----------------------------|--|
| 8:00am - 8:30am            | <b>Registration (Auditorium 114)</b>   |
| 8:30am - 9:00am            | <b>Welcome and Opening Remarks</b><br>Thomas J. Charron, Director of Education<br>NDAA at the National Advocacy Center<br>Columbia, SC   |
| 9:00am 10:15am             | <b>Introduction to the Workshop and Issue Identification:</b><br>Caren Harp, Senior Attorney<br>American Prosecutors Research Institute<br>Alexandria, VA                              |
| 10:15am - 10:30am          | <b>BREAK</b>   |
| 10:30am - 11:30am          | <b>Child and Adolescent Development: <i>What Kids Know and When They Know It</i></b><br>Allison DeFelice, PhD.<br>Chief Psychologist<br>Assessment and Resource Center<br>Columbia, SC |
| 11:30am - 1:00pm           | <b>Lunch (Group photo, front lobby NAC)</b>  |
| 1:00pm - 3:00pm            | <b>Child and Adolescent Development cont'd.</b><br>Allison DeFelice, Ph.D.<br>Columbia, SC   |
| 3:00pm - 3:15pm            | <b>BREAK</b>   |
| 3:15pm - 4:15pm            | <b>Competency Evaluation Tools</b><br>Dr. Jeff Musick<br>Chief Psychologist, Forensic Division<br>South Carolina Department of Mental Health<br>Columbia, SC                           |
| <b>Adjourn for the day</b> |  |

**\*\*\*There will be a group dinner Monday night at Palmetto's in the Vista section of Columbia. Participants will receive additional information about the dinner on Monday during class.\*\*\***

**Tuesday, September 30, 2003**

8:30am - 9:00am	<b>General Overview of DSM-IV and Axis Diagnoses</b> Dr. Steven Shea Clinical Professor University of South Carolina School of Medicine Executive Director New Hope Midlands Columbia, SC
9:00am - 10:00am	<b>Assessment of Malingering</b> Dr. Steven Shea Columbia, SC
10:00am - 10:15am	<b>BREAK</b>
10:15am - 11:30am	<b>Mental Evaluations: <i>How to Tell A Good One from a Bad One</i></b> Dr. Geoffrey R. McKee Clinical Professor USC Medical School Diplomat in Forensic Psychology Columbia, SC
11:30am - 1:00pm	<b>LUNCH</b>
1:00pm - 2:00pm	<b>Responding to Competency Challenges</b> Caren Harp APRI
2:00pm - 2:05pm	<b>Short Break</b>
2:05pm - 3:00pm	<b>Competence to Waive Miranda</b> Jeanne Howard Juvenile Division Chief Palm Beach County West Palm Beach, FL
3:00pm - 3:15pm	<b>Break</b>

3:15pm - 4:15pm      **Challenging Expert Testimony Re Competency; A Practical Application**  
Rick Lewkowitz  
Supervising Deputy District Attorney  
Sacramento County  
Sacramento, CA

4:15pm - 4:30pm      **Questions and Answers**

**Adjourn for the day**

**Wednesday, October 1, 2003**

8:30am -10:00am      **Trial Preparation**  
Jeanne Howard  
West Palm Beach, FL

10:00am -10:15am      **BREAK**

10:15am -11:30am      **Cross Examination of Expert Witnesses**  
John Rice  
Deputy District Attorney  
Pueblo, CO

11:30am      **Lunch**

**Afternoon Free**

**Thursday, October 2, 2003**

8:15am - 10:15am      **"On Playing a Poor Hand Well" The Resilience of Youth**  
Dr. Mark Katz  
Psychologist  
San Diego, CA

10:15am -10:30am      **BREAK**

10:30am - 11:30am      **IDEA, ADA and Sec. 504**  
Jeanne Howard  
West Palm Beach, FL

11:30am - 1:00pm      **Lunch**

- 1:00pm - 3:00pm      **Prosecuting Adolescent Sex Offenders: Typologies, Risk Assessment, and Treatment**  
Robert E. Longo, MRC, LPC  
New Hope Treatment Center  
Charleston, SC
- Caren Harp  
                                 APRI
- 3:00pm - 3:15pm      **BREAK**
- 3:15pm - 4:30pm      **Adolescent Sex Offenders cont'd.**  
Rob Longo  
Caren Harp
- 4:30-4:45pm          **Questions and Answers**
- Adjourn for the day**

**Friday, October 3, 2003**

- 9:00am -10:00am      **Ethical Considerations for Juvenile Court Prosecutors**  
Caren Harp  
APRI
- 10:00am -10:15am      **BREAK**
- 10:15am -10:30am      **Wrap Up and Closing Remarks**  
Thomas J. Charron  
NDAA

**Adjourn**

*The National District Attorneys Association and the American Prosecutors Research Institute Wish To Thank The Faculty For Their Generous Dedication Of Time To Our Workshop. They Also Wish To Thank The Attending Prosecutors For Their Enthusiasm And Their Active Participation.*

*This information is offered for educational purposes only and is not legal advice. This project was supported by Award No. 2002-MU-MU-0003, from the Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice. Points of view or opinions expressed in this document, or in the accompanying presentations or lectures, are those of the authors and instructors and do not necessarily represent the official position of the United States Department of Justice, the Office of Juvenile Justice and Delinquency Prevention, the National District Attorneys Association or the American Prosecutors Research Institute.*

**Background  
Competency Assessment  
Instruments**

## **Competency Assessment Instruments**

### **Foundational and Contextual Information**

#### Reliability

- consistency

#### Validity

- accuracy

#### Standardization

- replicable content, administration, scoring
- allows content-referenced (proportion correct), criterion-referenced (external standard to evaluate quality of score), norm-referenced measurement
- norms allow comparisons between individual performance and relevant group performance

#### Some Norms

-“average” 14-year-old no less capable than “average” adult in ability to understand trial matters and to perform mental processes required in trial-related decision-making (Grisso, 1998)

-however, juveniles referred for competency evaluations tend not to be average on competency-relevant variables, such as intelligence (average IQ of 453 detained adolescents approximately 86; average IQ of 474 community-based adolescents approximately 97; Grisso et al., 2003)

-defense attorneys have concerns about competence for about 10-15% of their clients (Hoge et al., 1992)

Some Incompetence Rates for Juveniles Referred for Evaluation (Cowden & McKee, 1995)

- Ages 9-12 approximately 80%
- Ages 13-14 approximately 50%
- Ages 15-17 similar to adult rate

Use of Competency Assessment Instruments (Borum & Grisso, 1995)

- 40% of experienced forensic clinicians use "frequently"
- 40% of experienced forensic clinicians use "never"
- overall use unknown
- none developed specifically for juveniles

**Ten Competency Assessment Instruments** (primary references: Grisso, 2003; Melton et al., 1997)

### **1. MacArthur Competence Assessment Tool-Criminal Adjudication (MacCAT-CA)**

#### Description

- structured interview consisting of 22 items
- items grouped and scored on 3 scales:
  1. Understanding (8 items)
    - comprehension of defendant's rights and of courtroom personnel and procedures
  2. Reasoning (8 items)
    - recognition of information relevant to defense
    - ability to adequately process information for legal decision-making
  3. Appreciation (6 items)
    - recognize relevance of information for own case
    - determine whether legal decision-making influenced by symptoms of mental disorder
- Understanding and Reasoning items based on hypothetical case
- inadequate responses on any of 6 Understanding items prompt standardized education with repetition of question(s) prior to scoring
- recommended cut-off scores for minimal/no impairment, mild impairment, significant impairment for each scale

#### Assets

- highly standardized administration and scoring
- educational process
- explicit focus on ability to plead guilty
- emphasis on decision-making not just understanding
- relevant norms: based on large national samples of detained defendants adjudicated incompetent, detained defendants presumed competent but being treated for mental health problems, and detained defendants not identified as needing competency evaluations

- discriminates well between incompetent and presumed competent defendants on all 3 scales
- cut-off scores offered descriptively for comparison not as indicative of competence or incompetence
- likely generalizable due to national sample

#### Limitations

- limited emphasis on Dusky consult-with-counsel prong
- does not specifically include items to assess abilities to testify or manage stress of trial
- over-reliance on hypothetical case and under-representation of case-specific information
- norms applicable to women?

#### **MacCAT-CA Study with Juveniles** (Grisso et al., 2003)

-927 youths (453 detained, 474 in community) ages 11-17 and 466 adults (233 detained, 233 in community) ages 18-24 from 4 geographic sites

#### Some Findings

1. 30% of 11-13-year-olds significantly impaired on Understanding and/or Reasoning
2. 19% of 14-15 significantly impaired on Understanding and/or Reasoning
3. 12% of 16-17 significantly impaired on Understanding and/or Reasoning (same rate as adult sample)
4. this pattern of age differences in scores unrelated to gender, ethnicity, SES, experience in criminal justice system, and whether in detention
5. scores related to intelligence; approximately 2/3 of detained juveniles 15 or younger had IQs in range associated with significant risk of incompetence due to impaired Understanding or Reasoning

#### Limitations of Study

- relatively smaller sample of those under 14
- sampling procedure may have underrepresented juveniles with serious mental disorders

## **2. MacArthur Judgment Evaluation (MacJEN)**

#### Description

- research tool to examine potential relationship between immaturity of judgment and defendants' choices in course of adjudication

- same sample as MacCAT-CA study with juveniles
- addresses 3 factors theoretically expected to change from childhood to adulthood:
  1. risk appraisal
    - a. risk recognition
    - b. risk likelihood
    - c. risk impact
  2. future orientation
  3. resistance to peer influence
- study also assessed relationship between age and compliance with authority
- uses structured interview questions with objective categories of responses for 3 hypothetical cases:
  1. police interrogation
    - a. confess
    - b. deny offense
    - c. refuse to cooperate
  2. disclosing information to defense attorney
    - a. full disclosure
    - b. partial disclosure
    - c. deny offense
    - d. refuse to cooperate
  3. plea bargain offer
    - a. accept
    - b. reject

#### Some Findings (Grisso et al., 2003)

1. age significantly related to choices in police interrogation (confessions decrease as age increases)
2. age significantly related to choices in plea bargain (acceptance of offer decreases as age increases)
3. responses reflecting compliance with authority significantly greater with each legal context for those 15 and younger
4. 11-13-year-old group significantly less often recognized risks than the other groups (14-15, 16-17, 18-24)
5. each juvenile group reported significantly lower likelihood of risk than the 18-24-year-old group
6. those 15 and younger reported significantly less risk impact than other groups

#### Limitations

- construct validity not established
- ecological validity not established (is performance on MacJEN similar to choices in real-life legal circumstances?)
- relatively smaller sample of youths under 14

-sampling procedure may underrepresent youths with serious mental disorders

### **3. Evaluation of Competency to Stand Trial-Revised (ECST-R; Rogers et al., 2001)**

#### Description

- still in development
- semistructured interview that explicitly attempts to operationalize Dusky standard
- also assesses feigned incompetency
- responses to predominantly open-ended questions rated across 4 sections:
  1. Consult-with-Counsel (10 items)
    - perceptions of attorney-client relationship
    - potential attorney-client conflicts and their resolution
    - unusual communication with attorney
    - rate any impairments that interfere with trust, understanding, communication
  2. Factual Understanding (15 items)
    - roles of principal participants
    - includes optional probes for obtaining more complete answers
  3. Rational Understanding (10 items)
    - capacity to make relatively unimpaired decisions
    - capacity to make logical judgments about case
  4. Atypical Presentation (28 items)
    - evaluate possible feigned incompetency

#### Assets

- explicit focus on Dusky
- attention to case-specific information for Rational Understanding and Consult-with-Counsel
- assessment of feigned incompetency

#### Limitation

- still in development

### **4. Georgia Court Competence Test-Mississippi State Hospital (GCCT-MSH)**

#### Description

- interview-based rapid screening device
- 21 items focus on:

1. locations of trial participants in drawing of empty courtroom (7 questions)
  2. functions of principal participants (7)
  3. charges (2)
  4. assisting defense attorney (3)
  5. what allegedly did to incur the charge (1)
  6. possible consequences if convicted (1)
- weighted scoring based authors' perception of items' importance
  - cut-off score for possible incompetence
  - 8 items to assess possible feigning

#### Assets

- standardized administration and scoring, though some of scoring criteria seem questionable
- brief administration time (about 15 minutes)
- drawing may be useful at times
- no published norms but some mean scores for relevant groups from studies available
- preliminary screen for feigning

#### Limitations

- in one study with delinquent youths, only 1/120 scored in "competent" range
- overemphasis on superficial issues (location of participants)
- inadequate sampling of competence-related abilities, appears to lack adequate correspondence to Dusky prongs of rational understanding and consult-with-counsel
- overemphasis on trial versus plea issues
- cut-off score may miss significant portion of incompetent defendants

### 5. Competence to Stand Trial Assessment Instrument (CAI)

#### Description

-semistructured interview guide that assesses 13 functions related to competence:

1. appraisal of available defenses
2. assessment of inappropriate behavior
3. ability to relate to attorney
4. ability to participate in planning defense
5. understanding of roles of principal participants
6. understanding of court procedure
7. appreciation of charges
8. appreciation of possible penalties
9. appraisal of likely outcome

- 10.capacity to communicate effectively with attorney
- 11.capacity to challenge witnesses
- 12.capacity to testify relevantly
- 13.assessment of motivation
- functions derived from 3 part definition of competence standard:
  - 1. ability to work with defense attorney
  - 2. awareness and understanding of proceedings
  - 3. understanding of consequences of proceedings
- development included review of appellate cases and legal literature, observation of competency hearings, interviews with judges and attorneys
- published in 1973, influenced most other instruments

#### Assets

- relatively complete coverage of functions relevant to competence
- emphasis on rationale employed by defendant rather than choices
- the limited evidence available suggests it correlates with CST and IFI (see below)
- in one study did not automatically produce findings of incompetence with persons diagnosed as psychotic
- useful conceptually

#### Limitations

- administration and scoring not standardized, unknown whether scoring system is helpful
- no norms for interpreting scores

## 6. Competency Screening Test (CST)

#### Description

- 22 item self-report screening instrument to determine whether more extensive competency evaluation needed
- comprised of incomplete sentences to be completed by defendant
- intended as a companion to CAI with same definition of competence standard (see CAI above)

#### Assets

- ease of administration
- accurately screens out from further evaluation a large percentage of defendants

### Limitations

- excessively high rate of classifying competent defendants as potentially incompetent
- appears biased toward placing defendants with negative views of legal system in the potentially incompetent category
- does not appear to adequately address competence-related abilities; what is assessed seems to diverge from Dusky
- some items open to interpretive errors by defendants
- scoring criteria not adequately specified
- no published norms, just a cut-off score

## **7. Competence Assessment for Standing Trial for Defendants with Mental Retardation (CAST-MR)**

### Description

- developed for use with adults with mental retardation
- attempts to compensate for expressive (emphasis on multiple choice [MC] questions) and receptive (simple vocabulary and syntax) language deficits as well as acquiescent response style
- assesses:
  1. Basic Legal Concepts (25 MC questions)
  2. Skills to Assist Defense (15 MC questions)
  3. Understanding of Case Events (10 open-ended questions)

### Assets

- MC sections may help compensate for expressive deficits
- relatively good coverage of competence-relevant content
- adequate differentiation among various sample groups in expected ways (persons with mental retardation and deemed incompetent scored lowest)
- good standardization

### Limitations

- MC format different from type of functioning needed in adjudication process
- MC format limits assessment of depth of understanding
- normative data based on relatively small samples
- relatively high score by retarded person does not mean person has competency-related abilities similar to non-retarded person
- provides little information about defendants' reasoning

## 8. Fitness Interview Test-Revised (FIT-R)

### Description

- structured interview based on Canadian "unfitness" statute
- content comparable to that of MacCAT-CA (see above)
- assesses:
  1. factual understanding of the proceedings (36 questions)
  2. appreciation of possible defenses and outcomes (10 questions)
  3. ability to participate in defense (24 questions)

### Assets

- substantial focus on defendant's own circumstances
- liberal examiner discretion to probe responses allows for numerous opportunities for individual deficits to surface
- broad coverage of relevant content
- initial evidence that findings generally consistent with MacCAT-CA

### Limitations

- some phrasing must be changed
- no published norms
- relatively subjective and general rather than specific scoring criteria
- relatively high need for further research due to some psychometric questions and anomalies

## 9. Interdisciplinary Fitness Interview (IFI)

### Description

- semistructured interview to be administered jointly by mental health professional and attorney
- rate defendants on:
  1. legal functions related to Dusky (5 items)
  2. mental health symptoms (11 items)
  3. overall impression of competency (4 items)
- also assign weights to items based on case specific circumstances

### Assets

- initial evidence suggests good interrater reliability
- rich observational data
- useful for structuring interview

- focus on relevant legal content
- may be appealing to legal community
- explicitly links symptoms and legal issues

#### Limitations

- only one published study, regard instrument as experimental
- possibly presumptuous to weight items
- in practice attorneys rarely available for competency evaluations
- no standardized administration or scoring
- no norms

### 10. Computer-Assisted Competence Assessment Tool (CADCOMP)

#### Description

- 272 primarily objective questions that tap legal knowledge, social history, psychological functioning
- produces computer generated summary self-report which forms the basis for interview

#### Limitations

- validity of defendant self-report unknown, problems may be unidentified
- lengthy preparation of defendant required
- lengthy administration
- impractical for outpatient evaluations
- validity essentially unknown

### Miranda Assessment Instruments

#### Contextual Information

##### Retrospective

##### Appellate cases (Grisso, 1998)

- younger than 13 usually resulted in opinion that lacked requisite understanding of Miranda
- ages 13-15 produced variable outcomes
- ages 16-18 most often resulted in opinion that understood Miranda

Following devices marketed under "Instruments for Assessing Understanding and Appreciation of Miranda Rights"

## 1. Comprehension of Miranda Rights (CMR)

### Description

- developed with adults and juveniles
- each of 4 Miranda warnings shown and read to examinee, who is asked to explain their meanings
- standardized inquiries provided to examiner to elicit further information when necessary
- conceptualized as only one component (understanding) of ability to waive Miranda rights; other components are beliefs about the legal context and problem solving abilities
- those below age 14 performed significantly more poorly
- juveniles with IQ scores below 81 generally performed poorer than adults with similar IQ scores

### Assets

- highly standardized administration and scoring
- relevant norms based on 203 adult offenders in halfway houses (> age 16) and 431 juvenile court detainees (ages 10-16)
- can use in conjunction with CMR-R and CMV (see below) to help clarify deficits and detect inconsistencies suggestive of feigning

### Limitations

- current understanding not retrospective understanding; CMR does not take into account demands present at time Miranda given
- local wording of Miranda may not be same as in CMR; if significantly different then scores cannot be compared to norms
- paraphrase response format may underestimate understandings of those with expressive deficits
- norms over 20 years old (updates underway)
- African-American juveniles with low IQ scores perform more poorly than white juveniles with similar IQ scores (may be due to decoding process and having linguistic background other than standard English)

## 2. Comprehension of Miranda Rights-Recognition (CMR-R)

### Description

- for each Miranda warning, examinee decides whether each of three statements means same as or is different from given warning
- requires virtually no expressive ability

#### Assets

- highly standardized administration and scoring
- relevant norms for adults and juveniles
- can use in conjunction with CMR and CMV to help clarify deficits and detect inconsistencies suggestive of feigning

#### Limitation

- even perfect performance does not necessarily show that examinee has usable knowledge of Miranda

### 3. Comprehension of Miranda Vocabulary (CMV)

#### Description

- examinee provides definitions of 6 of the more difficult words used in Miranda (consult, attorney, interrogation, appoint, entitled, right)
- to assist in interpreting errors on CMR and CMR-R
- scores significantly poorer for those under age 16
- scores not related to prior experience in justice system

#### Assets

- highly standardized scoring and administration
- relevant norms for adults and juveniles
- can use in conjunction with CMR and CMR-R to help clarify deficits and detect inconsistencies suggestive of feigning

#### Limitations

- adjunctive to CMR and CMR-R
- may not be applicable in some jurisdictions if different words used

### 4. Function of Rights in Interrogation (FRI)

#### Description

- assesses examinees beliefs about how Miranda rights function and what their importance is, need to show awareness that they are protective in nature
- 3 scales:
  1. Nature of Interrogation (perceptions of roles of police and suspects, need to show appreciation of jeopardy)

2. Right to Counsel (perceptions of roles of attorneys and clients, need to show recognition of advocacy role)
  3. Right to Silence (perceptions of power of right to silence and its ramifications for legal authorities, need to show recognition of absolute power of right to silence)
- consists of 4 pictures accompanied by hypothetical vignettes and 5 questions on each scale
  - poor scores suggest examinee might not be prepared to properly evaluate waiving Miranda even if appears to understand it based on scores on CMR, CMR-R, CMV
  - scores related to juveniles' prior experience with courts
  - juveniles performed significantly more poorly than did adults, with differences being most pronounced at lower IQ levels; juveniles with higher IQ scores differed little from adults with similar IQ scores

#### Assets

- highly standardized administration and scoring
- relevant norms for adults and juveniles

#### Limitation

- vignettes do not cover all possible scenarios

### **Potential Issues for Cross Examination**

Adjunctive nature of instruments

Overinterpretation of results

Appropriateness of norms

Consideration of specific demands of proceedings (competency)

Reason(s) for observed deficits

Capacity versus performance

Assessment of effort

Assessment of malingering

Effects of subsequent development (competency)

Correct standard


## References

- Borum, R. & Grisso, T. (1995). Psychological test use in criminal forensic evaluations. Professional Psychology: Research and Practice, 26, 465-473.
- Cowden, V. & McKee, G. (1995). Competency to stand trial in juvenile delinquency proceedings: Cognitive maturity and the attorney-client relationship. Journal of Family Law, 33, 629-660.
- Grisso, T. (1998). Forensic evaluations of juveniles. Sarasota: Professional Resource Press.
- Grisso, T. (2003). Evaluating competencies: Forensic assessments and instruments. (2<sup>nd</sup> ed.). New York: Kluwer Academic/Plenum Publishers.
- Grisso, T., Steinberg, L., Woolard, J., Cauffman, E., Scott, E., Graham, S., Lexcen, R., Reppucci, N. D., & Schwartz, R. (2003). Juveniles' competence to stand trial: A comparison of adolescents' and adults' capacities as trial defendants. Law and Human Behavior, 27, 333-363.
- Hoge, S., Bonnie, R., Poythress, N., & Monahan, J. (1992). Attorney-client decisionmaking in criminal cases: Client competence and participation as perceived by their attorneys. Behavioral Sciences and the Law, 10, 385-394.
- Melton, G. B., Petrila, J., Poythress, N. G., & Slobogin, C. (1997). Psychological evaluations for the courts: A handbook for mental health professionals and lawyers (2<sup>nd</sup> ed.). New York: The Guilford Press.
- Rogers, R., Grandjean, N., Tillbrook, C., Vitacco, M., & Sewell, K. W. (2001). Recent interview-based measures of competency to stand trial: A critical review augmented with research data. Behavioral Sciences and the Law, 19, 503-518.



## **Steven Shea**

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Steven J. Shea, Ph.D., is the Executive Director of New Hope Midlands, a Licensed Clinical Psychologist, and a Clinical Professor of Neuropsychiatry and Behavioral Science at the USC School of Medicine. He also has a private practice specializing in forensic psychology. He has conducted over 600 psychological evaluations on pre-trial defendants and has testified in the Circuit and Family Courts of South Carolina on a variety of civil and criminal issues.

Dr. Shea teaches in the areas of mental health and the law to trainees in medicine, psychology, social work law enforcement and attorneys; has been a consultant to the South Carolina Law Enforcement Division, and the SC Departments of Corrections, Juvenile Justice, and Public Safety. Dr. Shea has published articles and presented papers on forensic psychology, psychotherapy techniques, personality testing, behavioral medicine, and providing therapeutic services in correctional settings.



## Cautionary Statement

The specified diagnostic criteria for each mental disorder are offered as guidelines for making diagnoses, because it has been demonstrated that the use of such criteria enhances agreement among clinicians and investigators. The proper use of these criteria requires specialized clinical training that provides both a body of knowledge and clinical skills.

These diagnostic criteria and the DSM-IV Classification of mental disorders reflect a consensus of current formulations of evolving knowledge in our field. They do not encompass, however, all the conditions for which people may be treated or that may be appropriate topics for research efforts.

The purpose of DSM-IV is to provide clear descriptions of diagnostic categories in order to enable clinicians and investigators to diagnose, communicate about, study, and treat people with various mental disorders. It is to be understood that inclusion here, for clinical and research purposes, of a diagnostic category such as Pathological Gambling or Pedophilia does not imply that the condition meets disorder, or mental disability. The clinical and scientific considerations involved in categorization of these conditions as mental disorders may not be wholly relevant to legal judgments, for example, that take into account such issues as individual responsibility, disability determination, and competency.



# OVERVIEW OF MALINGERING

## STEVEN J. SHEA, PH.D.

### I. DEFINITIONS

***Malingering*** is the conscious, voluntary and intentional production of false or grossly exaggerated physical or psychological symptoms for the purpose of secondary gain.

### II. DIFFERENTIAL DIAGNOSIS

Depending on symptoms, malingering must be differentiated from genuine mental illness.

### III. COMMONLY MALINGERED SYMPTOMS IN LEGAL SETTINGS

- Amnesia
- Psychosis
- Post-traumatic Stress Disorder
- Intellectual Functioning
- COMPETENCY TO STAND TRIAL
- INSANITY

### IV. DETECTION OF MALINGERING

In general, detection of malingering may involve longer interviews, serial interviews, interviews of collateral sources, and psychological testing. A multi-disciplinary approach is helpful.

#### A. General Signs of Malingering During Interviews

Overplayed and Dramatic Presentation  
Deliberateness and Carefulness  
Presentation Inconsistent with Psychiatric Diagnoses  
Consistency of Self-Report  
Over-Endorsing Obvious Symptoms

## **B. MALINGERED PSYCHOSIS**

### **GENUINE HALLUCINATIONS**

- Associated delusion
- Intermittent
- Auditory + or – visual
- Detailed description
- Perceived as outside head (88%)
- Strategies to diminish
- Occur in quiet times
- If commands, usually not obeyed
- If people, normal sized and color
- Both male and female (75%)

### **FAKE HALLUCINATIONS**

- No associated delusion
- Continuous
- Visual or olfactory only
- Vague description or inaudible
- Perceived as inside head
- Nothing helps
- Occur when there is stimulation
- If commands, always obeyed
- Abnormal size and color
- Single sex

## **C. MALINGERED AMNESIA AND COGNITIVE DEFICITS**

Suspect malingering when performance on actual tests of memory is worse than performance during the interview. If patient is malingering cognitive deficits, get school records, employment history, and refer for psychological consultation.

## **D. Malingered Post-Traumatic Stress Disorder (PTSD)**


## **V. PSYCHOLOGICAL CONSULTATION IN MALINGERING**

The use of psychological testing in the detection of malingering is invaluable. Specific tests have been developed to detect malingering in certain symptom constellations. In malingered psychosis, the gold standard in the Structured Interview of Reported Symptoms (SIRS).



## **Geoffrey R. McKee**

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Mr. McKee is a Clinical Professor for the Department of Neuropsychiatry for the University of South Carolina Medical School. He is the former Chief Psychologist for the Hall Psychiatric Institute Forensic Psychiatry Service. Mr. McKee is the past-President for the American Academy of Forensic Psychology. He has peer-reviewed published research on the topic of Juvenile Competency to Stand Trial.

Mr. McKee has been an expert witness more than 200 times in family court, state court, and federal court.



## Mental Evaluations: How to tell the good ones from the bad ones

Geoffrey R. McKee, PhD, ABPP(Forensic)  
U. South Carolina Medical School  
September 30, 2003  
(803) 935-5685

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## Mental Evaluations Comparisons & Recommendations

**Evaluator's Qualifications:** Good vs. Bad  
Training, Experience, License/Certification  
**Evaluator's Procedures:** Good vs. Bad  
Interviews/Document'n, Tests, Collaterals,  
**Evaluator's Report: Good vs. Bad**  
Principles, Format, Content

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## Evaluator's Qualifications: Training, Experience, Certifications

- |                         |                            |
|-------------------------|----------------------------|
| ■ PhD, PsyD, MD         | ■ Qualified, unlicensed    |
| ■ Forensic experience   | ■ Institutional training   |
| ■ Issue-case experience | ■ Adults to adolescents    |
| ■ ABPP (Forensic)       | ■ Clinical to forensic     |
| ■ Knows SPFG, AAPL      | ■ "Vanity board" certifi'n |
| ■ AP-LS. AAPL member    | ■ Not APA, etc. member     |
| ■ Knows relevant law    | ■ Does not know statute    |
| ■ Frequent Forensic CE  | ■ Limited forensic CE      |

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### Evaluation Procedures: Interview Structure & Content

- Obtain individual's social/personal history
- Detailed inquiry of past legal/court history
- Obtain youth's report of current legal circumstances, alleged offense, arrest
- Conduct "competence abilities" interview with semi-structured guides or FAIs
- Assess relevant deficits with standardized tests (WISCIII, MACI, MMPI-A) or referral

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### Evaluator's Procedures: Interviews & Documentation

- |  |   |
|--|---|
| ■ Informed consent                           | ■ Uniformed consent                         |
| ■ >1, at-hearing session                     | ■ Single session only                       |
| ■ Longer sessions                            | ■ Hour-long session                         |
| ■ Obtains own history                        | ■ Reliance on other staff                   |
| ■ Age-relevant Qs                            | ■ Uses adult questions                      |
| ■ Maintains eval'n role                      | ■ Responds as therapist                     |
| ■ Reproducible record                        | ■ Absent, illegible record                  |
| ■ Screens response style (malingering, etc.) | ■ Accepts self-report without corroboration |

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### Psychological Tests & Forensic Assessment Instruments

- |   |  |
|---|--|
| ■ Qualified for test, FAI                     | ■ Not competent for test                 |
| ■ Published, current                          | ■ Relies only on interv'w                |
| ■ Test Manual Complete                        | ■ Outdated version test                  |
| ■ Test is reliable                            | ■ Insufficient reliability               |
| ■ Valid for case & issue                      | ■ Invalid application                    |
| ■ Test is peer-reviewed                       | ■ Invalid test administr'n               |
| ■ Administers own tests                       | ■ Lack of peer-research                  |
| ■ Low inferences from test/FAI to Dx or issue | ■ High inference from tests to Dx, issue |

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### CST Functional Abilities: Overview

- **Factual:** charges, penalties, pleas & consequences, likely outcomes
- **Understanding trial process:** roles, plea bargaining, process of pre-trial/trial events
- **Assist counsel:** trust attorney, disclose relevant case facts, weigh decisions, challenge adverse testimony, testify coherently (if needed), control behavior in court, self-protective motives.

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### Forensic Assessment Instruments: Adjudicative Competence

- Competence Assessment Interview (CAI)
- Competency Screening Test (CST)
- Georgia Court Competency Test-MSH
- Competency Assessment to Stand Trial-Mental Retardation (CAST-MR)
- MacArthur Competence Assessment Tool-Criminal Adjudication (MacCAT-CA)
- NOTE: Adolescent data only for MacCAT-CA  
Grisso, et al *Law&HumBhr* (Aug2003).

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### MacCAT-CA: Overview

- 22 items: hypothetical case; own case
- **Understanding-** "Factual": Terms, roles, etc.
- **Reasoning-** "Assist": recognizing/weighing case-relevant facts; explaining decisions
- **Appreciation-** "Rational understanding"-attitudes, beliefs about own legal case
- No impairment; Mild, Clinically significant

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**MacCAT-CA:  
Adolescent Data (Grisso, et al 2003)**

- Age groups: 11-13;14-15;16-17; 18-24
- 30% of 11-13 as impaired as seriously mentally ill-> likely IST opinion by clinician
- 19% of 14-15 impaired->likely IST opinion
- 16-17 & 18-24 similar in CST capacities
- BUT: Mean of each age group on U, R, & A in No Impairment or Mild Impairment range

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**Evaluator's Procedures:  
Third-party, collateral information**

- |  |   |
|--|---|
| ■ Obtains case records                       | ■ Relies on self-report                                 |
| ■ Multiple data sources                      | ■ Only supportive data                                  |
| ■ Interviews collaterals                     | ■ Accepts others' record reviews, interviews            |
| ■ Consent by collaterals                     | ■ Accepts collaterals' information uncritically         |
| ■ Assesses collaterals' accuracy, bias, etc. | ■ Absent, incomplete record of collaterals' information |
| ■ Makes record of collaterals' data          |   |

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**Evaluator's Procedures:  
Recommendations**

- Procedures are highly technical, complex; consider retaining own expert
- Provide your expert with all requested information for mental health issues of case
- Obtain, through own expert, copy of adverse expert's notes, raw test data, etc.
- Obtain/review APA, SGFP, AAPL, state practice, ethics codes

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### Evaluator's Report: General Principles

- Individualized; especially with juveniles
- Objective and impartial reporting of data
- Supportive & non-supportive data included
- Non-technical, though accurate jargon used
- Describes functional abilities/deficits
- Explains abilities/deficits to legal issues
- "Convergent validity" of data to Opinion(s)

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### Evaluator's Report: Structure & Content

- Referral reasons and date(s) of contact
- Sources of data & list of tests administered
- Youth's description of referral; Consent
- Social, clinical, developmental history
- Clinical observations & testing results
- Description of CST abilities/deficits
- Interpretation of relevance of CST deficits
- Recommendations for remediation as necessary

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### Evaluator's Report: Comparisons

- |   |   |
|---|---|
| ■ Fact-Foundation-Opinion relationship logical, clear | ■ Unclear attributions                                |
| ■ Discusses supportive & unsupportive data            | ■ Excessive descriptions: "classic", "textbook", etc. |
| ■ Distinguishes mental health & legal issues          | ■ No opinion on issue                                 |
| ■ Opinion(s) based on >1 data point or source         | ■ Diagnosis = Forensic opinion(s) on issue(s)         |
| ■ Opinion(s) on correct legal issue stated            | ■ CMR=CST   |
| ■ Recommendations as relevant & by expertise          | ■ Conclusory opinion without facts/foundation         |
|   | ■ Gives opinion(s) on issues not raised               |
|   | ■ Opinions exceed expertise                           |

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**References:  
Ethics Codes & Practice Guidelines**

- Ethical Principles of Psychologists and Code of Conduct. (2002). *American Psychologist*, 57, 12, 1060-1073.
- Specialty Guidelines for Forensic Psychologists. (1991) *Law & Human Behavior*, 15, 655-665.
- American Academy of Psychiatry & Law (1995). *Ethical Guidelines for the Practice of Forensic Psychiatry*, Baltimore, MD.

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**References:  
Casebooks & Resources**

- Melton, Petrila, Poythress, & Slobogin. (1997). *Psychological evaluations for the courts* (2<sup>nd</sup> Ed.). Guilford Press.
- Grisso, T. (1998). *Forensic evaluation of juveniles*. Professional Resource Press.
- Heilbrun, Marczyk, DeMatteo. (2003). *Forensic Mental Health Assessment*. Oxford Univ. Press.
- Goldstein, A. (Ed.) (2003). *Forensic psychology*. Vol. 11: *Handbook of Psychology*. Wiley & Sons.
- Rosner, R. (Ed.) (2003). *Principles & practice of forensic psychiatry* (2<sup>nd</sup> Ed.). Arnold Press.

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**References:  
Journal Articles**

- Cooper & Grisso (1997) Five-year update: evaluations for CST, *BehSci&Law*, 347-
- Grisso et al. (2003). Juveniles' competence to stand trial. *Law&HumBeh*, 27. 333-363.
- McKee & Shea (1999). Competency to stand trial in family court. *J. Am Acad. Psychiatry & Law*, 27. 65-73.
- McKee (1998). Competency to stand trial in preadjudicatory juveniles and adults. *J. Am Acad. Psychiatry & Law*, 26. 89-99.

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**Evaluator's Qualifications  
Recommendations**

- Do not rely only on self-representation
- Check with attorney colleagues
- Obtain most recent CV
- Ask for references from expert's colleagues
- Request work sample(s) of relevant cases
- Retain own expert for consultation
- Vigorously cross-examine Qualifications!!

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## **Caren Harp**

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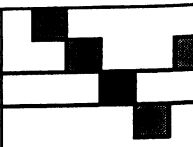


Caren Harp is a senior attorney at the American Prosecutors Research Institute, and she serves as the Director of the Juvenile Justice Prosecution Center. Ms. Harp regularly lectures and trains national multidisciplinary audiences on topics including serious and violent juvenile offenders, juvenile sex offenders, the emerging connections between domestic violence and juvenile delinquency, community prosecution and delinquency prevention, and the role of the prosecutor in juvenile court. Ms. Harp also provides trial advocacy training to prosecutors at the National Advocacy Center in Columbia, South Carolina. She lectures on the use of pre-trial motions, and effective direct and cross examination techniques, and offers substantive and style critiques to prosecutors participating in mock trial exercises.

Prior to joining APRI, Ms. Harp was a deputy prosecuting attorney in Arkansas for nine years, the last five years serving as a chief deputy. Coming from a rural jurisdiction, she prosecuted a wide variety of cases against adult and juvenile offenders including child sexual abuse, domestic violence, rape, robbery and murder, 10 of which were capital cases. Ms. Harp is a Certified Instructor for the Arkansas Commission on Law Enforcement Standards and Training. She has done extensive training of law enforcement personnel in the areas of criminal law and procedure, civil liability, and juvenile law. While serving as a deputy prosecutor, Ms. Harp also served as adjunct faculty at South Arkansas University and South Arkansas Community College, teaching courses in criminal law and procedure, evidence, criminal investigative techniques, juvenile justice and constitutional law.

Ms. Harp received a bachelor of science degree in agriculture in 1983, from the University of Arkansas, Fayetteville. She completed a master's degree in agricultural economics in 1985, and a juris doctorate in 1988. Ms. Harp is a member of the Arkansas Bar and is licensed to practice in the Eastern and Western District Courts of Arkansas.






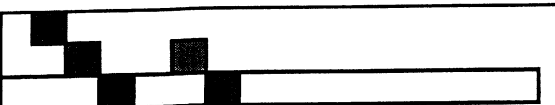
# Responding to Competency Challenges

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Caren Harp  
Senior Attorney  
APRI



APR  
ANALYTICAL PRACTICE

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# TWO THINGS TO REMEMBER


This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

## Competency to Stand Trial

- Ability to consult with a lawyer with a reasonable degree of rational understanding
- A rational as well as functional understanding of the pleadings against him

*Blackstone Commentaries*  
*Due Process Clause of the 14<sup>th</sup> Amendment*  
*Dusky v. U.S. 362 U.S. 402 (1960)*

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**ASPIRE**  
ANALYTICAL SERVICES PROVIDER

This image shows a single sheet of white paper with horizontal blue ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

# Competency to Waive Miranda

- States must demonstrate that a custodial statement in response to questioning was given voluntarily after a knowing and intelligent waiver of 5<sup>th</sup> Amendment rights.
  - 5<sup>th</sup> Amendment*
  - Miranda v. Arizona 384 U.S. 436*
  - Fare v. Michael C.442 U.S. 707 (1979)*

- 5<sup>th</sup> Amendment  
Miranda v. Arizona 384 U.S 436  
Fare v. Michael C. 442 U.S. 707 (1979)

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## Opposition's Goals:

- Effect public policy regarding:
  - Waiver and transfer of juvenile offenders.
  - Emphasis of treatment rather than accountability.




- APIXI**

[illegible]

# Our Goals:

- Ask the court to perform its gatekeeping function.
- Expose the flaws, biases, weaknesses and general lack of credibility inherent in some of these assessment tools; and in the way they are applied.
- Refocus the discussion on the law.



- **API 8**

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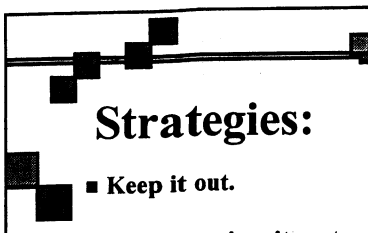
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## Strategies:

- Keep it out.
- If it comes in – its not credible.
- If it comes in and its “credible” – its NOT the law.




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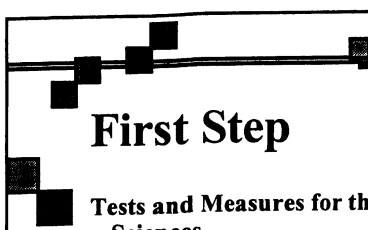
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## First Step

### Tests and Measures for the Social Sciences

- Population norms
- Strengths
- Weaknesses
- Limitations in application




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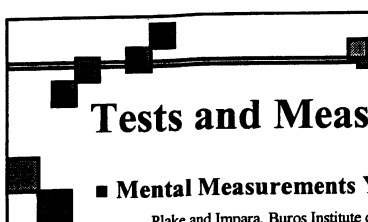
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## Tests and Measures

- **Mental Measurements Yearbook**  
Plake and Impara, Buros Institute of Mental Measurements of the University of Nebraska-Lincoln
- **Handbook of Scales for Research in Crime and Delinquency**  
■ Brodsky and Smitherman, NY Plenum Pub., (1983)




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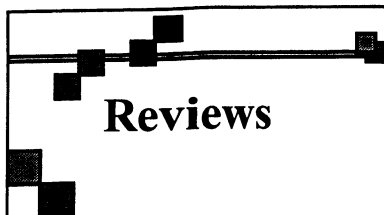
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## Reviews

- <http://www.unl.edu/buros/>
- <http://www2.uta.edu/library/testlist.htm>




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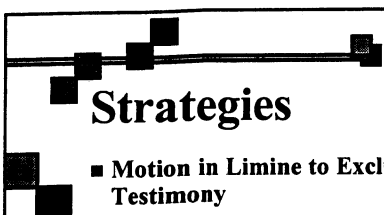
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## Strategies

- **Motion in Limine to Exclude the Testimony**
  - Competency or Miranda Waiver
- **Attack the Credibility on Cross**
  - Competency Hearing or Suppression
- **Beyond the law**
  - Dusky or Fare




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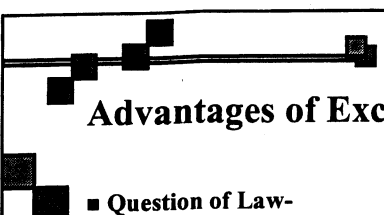
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## Advantages of Exclusion

- **Question of Law-**
  - Focus on the credibility of the test; not the facts of the case
- **Precedent-**
  - Ruling will be on the admissibility of the testimony, reliability of tests; not totality of circumstances




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## Keep It Out

- **Frye v. United States** 293 F. 1013 (1923)
  - “generally accepted” as reliable
- **Daubert v. Merrell Dow Pharmaceuticals, Inc.** 509 U.S. 579 (1993)
  - 4 part test

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## Daubert Test:

- Can the theory or technique be tested?
- Has it been subject to peer review?
- What is the known error rate and standards for operation?
- Does it have widespread acceptance in the scientific community?

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## Keep It Out

- Can the theory or technique be tested (has it been tested):
  - Research has not been replicated.
  - 20 years, no else doing this work.

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## Keep It Out

- Has it been subject to peer review?
  - Small group – cite to each other's work to establish validity.
  - Only editorial review.
  - Many are not in measurement books.

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## Keep It Out

- What is the known error rate and standards for operation?
  - No known error rate.
    - No pass/fail. No score by which someone is "incompetent."
  - Just a tool to consider in the totality of the circumstances.

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## Keep It Out

- What is the known error rate and standards for operation?
  - Some competency tools not "normed" on juvenile populations.
    - Norm – scores from a specific population that provide a frame of reference for interpreting other scores from that population.

*Psychometric Theory 2d Ed., Jun C. Nunnally, McGraw Hill Book Company, 1978 p. 264*

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“Any norm, however expressed, is restricted to the particular normative population from which it was derived.”

*Psychological Testing 4<sup>th</sup> Edition*  
Anne Anastasi  
Macmillan Publishing, NY 1976  
“The Normative Sample” P. 89-94

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## Keep It Out

- Not Widely Accepted - Case law
  - State v. Griffin, AC 23271, Conn. App. Ct. 2003
  - Carter v. Florida, 697, So. 2d 529, Fla. App. 1997

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## Even If It Comes In, It's NOT Credible

- All the same evidence demonstrates lack of credibility.
- Attack the credibility of the expert witness:
  - Bias, lack of preparation, improper administration of the test, etc.
  - Specialty Guidelines for Forensic Psychologists

*Law and Human Behavior, Vol. 15, No. 6, 1991*

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**Even If It Comes In, It's  
NOT Credible**

- **Additionally:**
  - Look for value bias in scoring on some tools.



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## If It Comes In and Its “Credible,” Its NOT the Law


- Goes beyond the requirements of the law.
- Attempts to evaluate the wisdom of decision.
- No test for it- still totality of the circumstances

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# Web Resources

- Daubert on the Web
  - [www.daubertontheweb.com](http://www.daubertontheweb.com)
- Forensic Evidence
  - [www.forensic-evidence.com](http://www.forensic-evidence.com)




- [illegible]

**Competence to  
Waive Miranda**

## ***Jeanne Howard***

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Jeanne Howard was born in Detroit, Michigan and has lived in Florida since 1969. She is a graduate of the University of Florida and Nova University Law Center. Ms. Howard is married and has a son. Her husband is a former prosecutor and presently a solo practitioner. Her son is a junior in high school.

Ms. Howard became an attorney in 1979. She joined the State Attorney's Office in May 1978 as an intern and has remained in the Juvenile Division for 21 years. She has worked in all areas of juvenile court including child welfare. Ms. Howard developed and supervised a misdemeanor mediation program within the State Attorney's Office for all juvenile first offenders. She has been the Juvenile Division Chief for more than 15 years, currently supervising a staff of 22.

Ms. Howard is presently the Chair of the Juvenile Chiefs subcommittee of the Florida Prosecuting Attorneys Association. She is a member of the Florida Bar's Juvenile Court Rules Committee. She serves on numerous state and local juvenile justice committees and task forces, and she is heavily involved in drafting legislative proposals and testifying before State House and Senate juvenile justice and criminal justice subcommittees each session. Ms. Howard is also actively involved in teaching various aspects of juvenile justice. She is an adjunct professor at Palm Beach Community College and the local police academy. She works with the Attorney General's office teaching School Resource Officers. She has written or updated chapters of the continuing legal education manual on juvenile justice for the Florida Bar and has taught at the annual Juvenile Justice Education Seminar sponsored by the Florida Prosecuting Attorneys Association for the past 10 years.



## **JUVENILE WAIVER OF MIRANDA & CONFESSIONS**

  
**Jeanne D. Howard**  
Chief Juvenile Prosecutor  
Palm Beach County, FL

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## **Waiver of Miranda Rights**

- Appropriate test for validity of juvenile's waiver of Miranda is totality-of-the- circumstances not merely age  
Fare v. Michael C. 442 U.S. 707 (1979).

### **Cases Distinguishing**

Ramirez v. State, 739 So2d. 568 (FLA 1999)

US ex rel Hardaway v. Young, 162 F. Supp 2d 1005  
(N.D. Ill, 2001)

### **Disagreed by**

State v. Nicholas, 444 A.2d. 373 (Me. 1982)

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## **Totality of the Circumstances**

- Criteria based on characteristics of the juvenile
- Criteria based on circumstances surrounding the interrogation

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### **Juvenile's Characteristics**

- Age
- Education
- Knowledge of charge and nature of rights
- Experience
- Background
- Intelligence

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### **Juvenile's Characteristics**

- Prior experience with interrogations
- Capacity to understand warnings and consequences of waiving them
- Whether the juvenile refused to give voluntary statements in the past
- Whether the juvenile has repudiated a statement at a later date

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### **Procedural Characteristics**

- Whether child was held incommunicado or allowed to consult with adult or attorney
- Whether the child was interrogated before or after formal charges were filed
- Length of the interrogation
- Methods used in the interrogation

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### **Competence to Waive Rights**

- Questions raised include:
  - The ability to comprehend each Miranda warning
  - The ability to grasp the significance of rights in the context of juvenile court
  - The ability to process the information in deciding whether to waive.

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### **Ability to Comprehend**

- Juvenile's capacity to understand the meaning of the words that are read.

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### **Ability to Grasp Significance of Miranda Warnings**

- Juvenile's relevant beliefs and perceptions of the warning and its function.
  - Ex. "don't attorneys just get you money??"

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### Ability to Process Information

- Juvenile must be able to use the knowledge of the rights, combined with the understanding of how that right affects them..and then be able to weigh the consequence of their decision to waive...both short term and long term.
- Juvenile must

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### Parental Presence

Notification and presence of parent in confession is not mandatory but can affect the admissibility of confession if there are any other negatives such as tender age .

Riley v. Franzen, 102 S. Ct. 617 (1981)  
full case found at 653 F.2d 1153

Chaney v. Wainwright,  
561 F.2d 1129(5<sup>th</sup> 1977)

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### Parental Presence

Issue of parental presence is controlled by State laws and State Constitutions.

Most states hold that parental presence is a factor in totality of the circumstances but failure to have parent present does not cause confessions to be inadmissible per se.

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## Officer Required To Answer Questions Honestly

Some States allow confessions even though defendant asked questions about his rights as long as officer answered questions honestly.

Fla, Ill, Kan., La., Mo., NC., ND.

2<sup>nd</sup> Circuit, 9<sup>th</sup> Circuit

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## SCHOOL CONFESSIONS

- Same principle of reasonableness that applies to Fourth Amendment claims  
(New Jersey v. TLO 469 U.S. 325 (1985))  
should apply to Fifth Amendment claims.
  - Florida v. V.C. 600 So2 1280 (3DCA 1992)
- Juveniles not "in custody" when at school even though they cannot leave. Restriction stems from status as students not their status as suspects. cites Minnesota v. Murphy 465 U.S. 420 (1984).

Used pursuant to Fair Use Act, 17 USC 107

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## REFERENCES

Robert Scott, Former Assistant County Attorney,  
Supervisor Juvenile Division Anoka, Minn

Thomas Grisso, PhD.,  
Forensic Evaluations of Juveniles,  
Professional Resource Press, 1998

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## ***Rick Lewkowitz***

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Rick Lewkowitz received his bachelor's degree from the University of California at Santa Cruz, and his juris doctor from McGeorge Law School in 1978. He and his wife, Patti, have been married for 23 years and have three teenage children.

Mr. Lewkowitz is the Supervising Deputy District Attorney in charge of the Juvenile Division of the Sacramento District Attorney's Office. He has been a prosecutor in Sacramento for 21 years. During that time, he has also supervised felony trial teams, as well as that office's first multi-disciplinary Domestic Violence Unit. Before becoming a supervising attorney, Mr. Lewkowitz spent several years practicing as a trial attorney focusing on domestic violence and child abuse cases.

Throughout his expansive career, Mr. Lewkowitz has also served on numerous committees and task forces that have addressed a wide range of issues. Most recently, he has served as a member of the Sacramento County Juvenile Institutions and Programs Committee, the Sacramento Gun Violence Reduction Task Force, and the Sacramento Juvenile Court Delinquency Committee. He has also received a number of awards for his outstanding achievements in the area of family and domestic violence.

Since 1981, Mr. Lewkowitz has served as an attorney coach, scoring judge, and presiding judge for the California State High School Mock Trial Program. He has also been a lecturer on the subjects of child abuse, domestic violence and juvenile justice throughout California. Additionally, he has volunteered since 1988, as a baseball and soccer coach.



**CHALLENGING EXPERT TESTIMONY  
RE COMPETENCE**

1. **LEGAL ISSUE**

**M is Mentally Competent If:**

- a) Capable Of Understanding The Nature And Purpose of Proceedings Against Him, and
- b) Able To Assist Attorney In Conducting A Defense In A Rational Manner

**Authority**

**Dusky v. U.S.** 362 U.S. 402 (1960)  
**CALJIC No. 4.10**

2. **GUIDING PRINCIPLE**

**An Opinion Is Only As Good As The Facts Upon Which It Is Based**

3. CASE PREPARATION

- a) KNOW YOUR FACTS!
- b) KNOW YOUR FACTS!

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c) Initial Work-Up

- Obtain Offense Reports Of Prior Arrests
- Obtain Prior Psych. Evaluations
- Obtain Prior Psych. Records
- Obtain School Records
- Obtain Juvenile Hall Records

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d) Obtain Defense Discovery

- All Written Psych. Reports
- Raw Notes
- Raw Test Data
- Test Results
- Interview Tapes
- List Of All Materials Provided To And Considered
- By Psych.

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e) Research The Expert

- Resume
- Review Prior Transcripts
- Discuss Psych. With Other Prosecutors

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4. CHALLENGING THE RESUME

Look To:

- a) Embellishment Of Credentials
- b) Lack Of Specific Experience

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5. CHALLENGE EXPERT BIAS

- a) Financial
- b) Other

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6. AN OPINION IS ONLY AS GOOD AS FACTS UPON WHICH IT IS BASED.

- a) Incomplete Information
- b) Inaccurate Information
- c) Unreliable Information
- d) Ignored Critical Information
- e) Utilize Skewed Data

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7. HOW WAS ISSUE FRAMED?

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8. PROBLEMS WITH M's INTERVIEW

- a) How Much Time Devoted?
- b) Level Of Communication Skills
- c) M's Reliability
  - Point Out Lies
  - Point Out Omissions
  - Compare To Available Data
  - Any Attempt To Corroborate

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9. CHALLENGING PSYCH. TESTS

a) Resource:

The Handbook Of Psychological Assessment (3<sup>rd</sup> Ed.) By Gary Groth-Marnat. Published By John Wiley & Sons, Inc. New York, New York

b) REMEMBER: There Is No Medical Or Scientific Test To Demonstrate Mental Competency.

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10. BRADFORD'S CASE

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a) Issue Framed O.K.

b) Why No Mention Of Competency Assessment Rating Form

c) Did Have Police Report

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d) Interview With Foster Mom

- Five Months In Home
- New School
- Two Years Of Counseling
- Transferred, Not Expelled
- Other Boy Hit M

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e) Observations

- Difficult To Understand
- Asked To Repeat
- Multiple Explanations
- Depressed About Court
- No Psychotic Symptomatology

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f) M Interview

- Currently Charged With Assault & Battery
- Felony v. Misdemeanor
- M's Chronology Of Events
  - Fabrication
  - Details
- When Confronted With Contrary Witness Statements M Says They "Changed Their Statements"
- Civics Review

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g) Test Results

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h) Conclusions

- Anger Problems
- Communication Deficits
- Re-Explain In Simpler Terms
- Difficult To Understand
- Difficulty Understanding How To Appropriately Resolve Situation And Hit The Boy
- Not Understand What Is Going On In Court
  - Civics Deficit
- Poor Historian
- What "Evidence" He Had
- Does Not Possess Capacity To Testify

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11. REMEMBER: USE FACTS  
TO CHALLENGE  
UNDERPINNINGS OF OPINION

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## CHALLENGING EXPERT TESTIMONY RE COMPETENCE

### 1) LEGAL ISSUE

M Is Mentally Competent If:

- a) Capable Of Understanding The Nature And Purpose Of Proceedings Against Him,  
and
- b) Able To Assist Attorney In Conducting A Defense In A Rational Manner.

Authority

Dusky v. U.S. 362 U.S. 402 (1960)  
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### 2) GUIDING PRINCIPLE

An Opinion Is Only As Good As The Facts Upon Which It Is Based.

### 3) CASE PREPARATION

- a) KNOW YOUR FACTS!
- b) KNOW YOUR FACTS!
- c) Initial Work-Up
  - 1) Obtain Offense Reports Of Prior Arrests
  - 2) Obtain Prior Psych. Evaluations
  - 3) Obtain Prior Psych. Records
  - 4) Obtain School Records
  - 5) Obtain Juvenile Hall Records
- d) Obtain Defense Discovery
  - 1) All Written Psych. Reports
  - 2) Raw Notes
  - 3) Raw Test Data
  - 4) Test Results
  - 5) Interview Tapes
  - 6) List Of All Materials Provided To And Considered By Psych.

- e) Research The Expert
  - 1) Résumé
  - 2) Review Prior Transcripts
  - 3) Discuss Psych. With Other Prosecutors

f) KNOW YOUR FACTS!

4) CHALLENGING THE RESUMÉ

Look To:

- a) Embellishment Of Credentials
- b) Lack Of Specific Experience

5) CHALLENGE EXPERT BIAS

- a) Financial
- b) Other

6) AN OPINION IS ONLY AS GOOD AS FACTS UPON WHICH IT IS BASED.

- a) Incomplete Information
- b) Inaccurate Information
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- d) Ignored Critical Information
- e) Utilize Skewed Data

7) HOW WAS ISSUE FRAMED?

8) PROBLEMS WITH M's INTERVIEW

- a) How Much Time Devoted?
- b) Level Of Communication Skills
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10) BRADFORD's CASE

- a) Issue Framed O.K.
- b) Why No Mention Of Competency Assessment Rating Form
- c) Did Have Police Report
- d) Interview With Foster Mom
  - 1) Five Months in Home
  - 2) New School
  - 3) Two Years of Counseling
  - 4) Transferred, Not Expelled
  - 5) Other Boy Hit M
- e) Observations
  - 1) Difficult To Understand
    - a) Asked To Repeat
  - 2) Multiple Explanations
  - 3) Depressed About Court

- 4) No Psychotic Symptomatology
- f) M Interview
  - 1) Currently Charged With Assault & Battery
  - 2) Felony v. Misdemeanor
  - 3) M's Chronology Of Events
    - a) Fabrication
    - b) Details
  - 4) When Confronted With Contrary Witness Statements M Says They "Changed Their Statements"
- 5) Civics Review
- g) Test Results
- h) Conclusions
  - 1) Anger Problems
  - 2) Communication Deficits
  - 3) Re-Explain In Simpler Terms
  - 4) Difficult to understand
  - 5) Difficulty Understanding How To Appropriately Resolve Situation And Hit The Boy
  - 6) Not Understand What Is Going On In Court
    - a) Civics Deficit
  - 7) Poor Historian
  - 8) What "Evidence" He Had
  - 9) Does Not Possess Capacity To Testify

11) REMEMBER: USE FACTS TO CHALLENGE UNDERPINNINGS OF OPINION

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

May 13, 2003

Ms. Connie R. Owens  
Assistant Public Defender  
Sacramento County Public Defender's Office  
Juvenile Division  
9591 Kiefer Boulevard  
Sacramento, CA 95827

RE: The Matter of [REDACTED]  
Case Number: 113479

Dear Ms. Owens:

Per your request, I provided a psychological evaluation of [REDACTED] age fifteen, in my Auburn office on May 9, 2003. Bradford was cooperative during his evaluation.

**PSYCHOLOGICAL - LEGAL ISSUES**

[REDACTED] has been charged with battery with serious bodily injury. The purpose of the present psychological evaluation is to assess Bradford's psychological state, his ability to understand the nature of the charges and proceedings being taken against him, and to assess his ability to work with his attorney in preparing a rational defense in his case. He was also assessed to determine his treatment and placement needs.

In order to gather the data necessary to form an opinion regarding these questions, Bradford was administered a clinical interview to obtain background information and to observe the quality of his intellectual and emotional responding. He was also administered a battery of psychological tests, including the Bender-Gestalt Test, the Wide Range Achievement Test - 3 (WRAT-3), the Wechsler Intelligence Scale for Children - III (WISC-III), the Rorschach Ink Blot Test, and the House-Tree-Person Projective Drawings Test. Additionally, the Competency Assessment Instrument Rating Form was also completed. Additionally, I had the opportunity to review relevant documents pertaining to this case, including the police report, a probation report, and

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a prior psychological evaluation by the U.C. Davis Mind Clinic, dated December 21, 2001. I also interviewed Bradford's foster mother.

INTERVIEW WITH BRADFORD [REDACTED] FOSTER MOTHER

I interviewed Bradford's foster mother, [REDACTED] in my office on May 9, 2003. [REDACTED] reported that Bradford has been living with her for the past five months. She also has three other foster children. She indicated that Bradford has been adjusting very well, his placement will likely be long-term, and she may seek guardianship of him. She indicated that Bradford's father is deceased, and that he was a quadriplegic. She stated that Bradford's mother is a drug addict, and he sees her for supervised visits every other Thursday. She stated that when Bradford visits with his mother, he usually just sits and does not say a lot. [REDACTED] reported that Bradford was born with heroin in his system, and he has mild mental retardation.

With regard to Bradford's medical history, [REDACTED] reported that he has a heart murmur. He currently is not prescribed any medication. She indicated that Bradford's therapist does not believe that he needs medication, but instead needs a stable environment. She reported that Bradford is delayed and he did not understand why he needed to come to his appointment and take tests. She stated that she has to explain things to him like he is in the third grade or he does not understand.

With regard to Bradford's psychiatric history, [REDACTED] reported that he has not been prescribed psychiatric medication or been hospitalized for psychiatric reasons, to her knowledge. She indicated that Bradford came from a home in which he was neglected and had no food, and his mother was on rock cocaine. She stated that there were twenty-one or twenty-four Child Protective Services referrals for all of the children, given he has thirteen siblings. She stated that all of his younger siblings are in foster care. Bradford only has contact with two of his brothers.

[REDACTED] indicated that Bradford has a speech problem, given his words tend to run together. She stated that he has been in counseling with [REDACTED] for the last two years, and he had talked to his counselor about the boy who was bothering him, who Bradford later was accused of assaulting. She indicated that [REDACTED] told Bradford to talk to the staff about the problem, and Bradford said that he did, but they do not know who he talked to.

[REDACTED] stated that since Bradford has been living with her, he has not handled things on his own, but typically asked adults for help or advice. She indicated that it was out of character for him to hit the other boy, given he has not been in fights before.

With regard to Bradford's schooling, [REDACTED] reported that he currently is in the ninth grade at Folsom High School. He was attending Cordova High School and was originally

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placed in a "higher" Special Education class because the school district did not have his IEP records. She indicated that the class was too difficult and he was finally put in a suitable class for one and a half weeks, and then the incident occurred. She stated that he then was placed on independent studies. She indicated that Bradford was not expelled because the other boy hit him, but he was transferred. She stated that Bradford has always been in Special Education classes. When asked if Bradford had missed a lot of school, [REDACTED] indicated that it took three weeks to get him registered in January for school, given the school would not take him until they received his records. She indicated that since the incident occurred in April, he has been on independent studies, and will start Folsom High School Monday morning. She reported that when Bradford was living with his mother, his siblings and he did not go to school much, they were neglected, and physically and sexually abused. She stated that Bradford likes school and was attending every day and doing his work after he came to live with her.

[REDACTED] described Bradford's behavior at home as "good." She indicated, for example, that he is helpful with chores, follows directions, and gets along with the other children. She indicated that he has difficulty expressing himself, however. She stated that the Court has approved that Bradford stay in foster care. She said that she believes that Bradford thinks he did what he was supposed to do, because the other boy came after him and so he hit him. She indicated that she has talked to Bradford about what he needs to do in the future, but he has short-term memory problems. She stated that he typically gets along well with other children.

#### PSYCHOLOGICAL EVALUATION OF [REDACTED]

##### **Behavioral Observations:**

[REDACTED] is a 15-year-old African-American male who was brought to his scheduled appointment by his foster mother. He was alert, cooperative, and oriented to person and place, but not to time. His gait was erect and brisk, his motor activity was normal, and his hands were steady. He was casually dressed, and his hygiene appeared to be good. Bradford spoke very unclearly and tended to run his words together. He was therefore very difficult to understand, and I asked him to repeat himself on numerous occasions. He also displayed deficits in receptive communication, and it was necessary to explain things to Bradford several times before he was able to grasp various concepts. He displayed serious affect, but reported that his mood is "normal." He stated that he has been depressed about Court.

The content of Bradford's conversation and his stream of consciousness were concrete. He displayed no evidence of psychotic symptomatology. He appeared to have difficulty understanding basic concepts, however. He reported that his sleep, appetite, and energy level are normal. He reported that he has no trouble concentrating, but occasionally has trouble remembering

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things. He indicated that he does not get angry a lot, and that he typically walks away if he is provoked.

#### **Clinical Interview:**

During my clinical interview with Bradford, he and I discussed his background as well as the present charges against him and competency issues. With regard to his background, he reported that he was born on June 28, 1987, in Sacramento, California. He indicated that he was initially raised by his mother in Sacramento. He stated that he never lived with his father, and that his father died, but he does not remember how old he was when his father died. He stated that he does not like talking about his father. Bradford indicated that he has fourteen siblings. He was unsure about his birth order. Bradford indicated that he lived with his mother until the age of thirteen, and that the situation was "comfortable." He reported that he does not know why he was placed in foster care. When asked specifically if there were any problems at home, he stated that he did not know about any because he was outside all the time. He stated, for example, that he does not know if his mother used drugs, because she treated him like her son.

Bradford denied ever being abused or molested. He stated, however, that his mother "probably" slapped him. He reported that when he lived at home, they sometimes had food and if they did not, then he stayed at a friend's house, or with other relatives. Bradford indicated that he currently is living in his sixth foster home. He stated that his experience in foster care has been "kind of bad," given past foster parents treated him like "crap." He explained that they called him names and "awful stuff." Bradford stated that he has been living in his current foster home for the last two months and he likes it well. He has two foster parents and three foster siblings, and gets along well with everyone. Bradford indicated that he sees his mother for visits every two weeks, and the visits are going well. When asked how he felt about his mother, he replied, "She got her life in order and I think she is doing great." He denied being angry with his mother.

With regard to his education, Bradford stated that he currently is in the ninth grade and is supposed to start Folsom High School today. He indicated that he has been on independent studies, but he likes attending school better. Bradford reported that he has made good grades in the past, but he does not know what type of grades he is receiving now. He reported that he has been in Special Education classes because math and spelling are difficult for him. He reported being suspended on one occasion for hitting the boy in his current case. He denied ever being expelled.

With regard to his medical history, Bradford stated that he does not think he has suffered any major medical problems, illnesses, or injuries. He currently is not prescribed any medication.

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With regard to his psychiatric history, Bradford stated that he has never been prescribed psychiatric medication, been hospitalized for psychiatric reasons, or ever attempted suicide. He reported that he has been in counseling for the last two years, and he is working on his anger.

With regard to his substance abuse history, Bradford denied ever trying drugs or alcohol. When asked what he thought about drugs and alcohol, he replied, "It messes your mind up."

Bradford denied ever being arrested in the past. He reported that he currently is charged with assault and battery. Bradford indicated that he does not know if he is charged with a felony or a misdemeanor or the difference between the two.

When asked to explain what happened, Bradford stated that he was sitting with his friends eating lunch and a boy asked, "Who is this punk?", referring to him. Bradford stated that the next day, the same boy asked him to skate with him, but he told the boy, "You probably suck." because he did not want to skate, given the boy wanted to skate on school campus and he did not want to get in trouble or get suspended. Bradford indicated that the next day, the boy started calling him bad names and so he walked away, but the boy came up from behind and pushed him. Bradford indicated that he pushed the boy back, walked away and told staff what happened, because the boy said he was going to kill him. Bradford indicated that the staff told him the boy was only "playing" with him because of Bradford's size, given Bradford is bigger. Bradford stated that he therefore told his friend, who is a senior, what happened. His friend told him to walk away. Bradford indicated that the next day, the boy's friends asked him to sit with them at lunch and told him that the boy was not at school that day. Bradford reported that he sat down, the boy came up and started saying "awful stuff." Bradford stated that he got up and another boy pushed this boy in the bushes, because he was playing with him. Bradford stated that he tried to help the boy up, but he thought that he was the one who pushed him in the bushes. He stated that the boy therefore charged at him and hit him. He indicated that he then pinned the boy down and told him to calm down. He stated that he then told the staff what happened.

Bradford indicated that the next day, the boy's friend told him that he wanted revenge. He stated that the boy came up to him at lunch, and then another tall boy slapped the milk out of the boy's hand. Bradford indicated that he was eating his burrito at the time, he looked at the boy and he looked back, and his friend said "Fight." Bradford said that he said "No," but the boy shoved him. Bradford stated that he was thinking that it was right to hit him because he kept hitting him, and so hit him in self-defense. During this part of the interview, Bradford had some difficulty expressing himself.

When asked if the boy was hurt badly, Bradford stated that he did not see what happened because he walked away. He stated that staff then took him to the office, and he went

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home. He reported that the police came by later and arrested him, and he spent a week in juvenile hall. When asked how much bigger he is than the other boy, Bradford stated that the boy comes up to his chin. When it was pointed out to Bradford that witnesses said that the assault was unprovoked, he indicated that witnesses have changed their statements.

In order to assess Bradford's understanding of legal proceedings, I asked him a number of questions. He reported that he does not know his attorney's name. When asked if his attorney is Connie Owens, he replied, "Is that my social worker?" He reported that his attorney's role is to "support me and get me the stuff I need." Bradford appeared to be confused regarding the difference between his attorney and his social worker. He indicated that his social worker "supports me and goes to my visits." When asked if he understood that it is his attorney's job to defend him in court, he said that he did.

Bradford reported that he does not know what the District Attorney does or what the word "prosecute" means. He reported that the Judge "tells me what to do or not." When asked if he understood the Judge also keeps order in the Court, he stared blankly at me. Bradford indicated that he had difficulty understanding what was going on in Court because of "different words" which were used that did not make sense. He indicated that he does not understand what is involved in a trial. When asked what evidence he could use in his case, Bradford stated that he did not know, but he thinks that "Stacy" has it. Bradford also indicated that he does not understand what could happen if he is convicted of the charges against him. When asked what being on probation would involve, Bradford stated that he thinks he would have "something on his ankle." Bradford reported that he does not understand the different ways he could plead in his case.

When asked what might be helpful for him to stay out of trouble in the future, Bradford indicated that he goes to counseling every Tuesday and he lives at Mather Air Force Base, which is "in the middle of nowhere."

#### **Test Results:**

Bradford was administered the Bender-Gestalt Test in order to screen for any neuropsychological deficits. He scored in the impaired range on this test, presenting some evidence of neuropsychological deficits. His performance further suggests that he possesses fair to poor psychomotor, planning, and organizational skills.

Bradford was administered the Wechsler Intelligence Scale for Children - III (WISC-III) in order to assess his intellectual functioning. His test results suggest that he is functioning intellectually in the mentally retarded range, given he obtained a Full Scale IQ of 56, a Verbal IQ of 56, and a Performance IQ of 65, all of which are in the mentally retarded range. His IQ scores appear to be valid. His scaled scores for the WISC-III are as follows:

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Verbal

Information	3
Similarities	3
Arithmetic	2
Vocabulary	1
Comprehension	2
Digit Span	2

Performance

Picture Completion	5
Coding	7
Picture Arrangement	2
Block Design	3
Object Assembly	4

Verbal IQ	:	56	
Performance IQ	:	65	
Full Scale IQ	:	56	
Verbal Comprehension Index Score	:		59
Perceptual Organization Index Score	:		54
Freedom from Distractibility Index Score	:		72

Bradford's test results suggest that he is suffering from consistent deficits in both fluid and crystallized intellectual functioning. On the Verbal scales, his score on the Vocabulary subtest suggests that he possesses poor language usage and accumulated verbal learning ability, while his score on the Arithmetic subtest suggests that he possesses poor numerical and logical reasoning abilities. His score on the Comprehension subtest suggests that he possesses poor social judgment and has difficulty understanding social rules and regulations.

On the Performance scales, Bradford obtained his highest score on the Coding subtest, suggesting that he possesses below average visual-motor speed and coordination and ability to learn an unfamiliar task. His lowest Performance score was on the Picture Arrangement subtest, suggesting that he possesses difficulty understanding interpersonal situations and comprehending a total situation and evaluating its implications.

Bradford was administered the Wide Range Achievement Test - 3 (WRAT-3) in order to assess his academic functioning. His test results suggest that he is reading at the second grade level, which places him in the first percentile for adolescents in his age group. His test results also suggest that he is spelling at the second grade level, which places him in the first percentile, and is performing arithmetic at the third grade level, which places him in the first percentile for adolescents in his age group.

Bradford's self-concept, as revealed by his performance on the House-Tree-Person Projective Drawings Test, is characterized by simplicity, as well as by some unusual features. His test results suggest that he likely has difficulty reaching out to others and that he has difficulty trusting others. Some internal emotional turmoil is indicated, as is anxiety and a tendency to view

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situations in a fantasized way. His drawing of a house suggests that he feels like his home life is inaccessible to him.

Bradford's perception of the world around him, as revealed by his performance on the **Rorschach Ink Blot Test**, is characterized by cognitive and emotional constriction, as well as by defensiveness. First of all, it should be noted that he obtained an invalid profile since he did not produce a response for every ink blot. Adolescents tend to produce only a few responses to the ink blots when they are either overwhelmed by the stimuli presented to them or are overly defensive. In Bradford's case, he tended to respond to the ink blots in a very concrete way. His test results are not valid.

### SUMMARY AND CONCLUSIONS

The results of the present psychological evaluation reveal an adolescent with significant cognitive and intellectual delays, who has a history of severe neglect and abuse. Bradford also has a past diagnosis of Dysthymia. Bradford indicated that he has been in therapy for the last two years for anger problems, but he was vague regarding why he has been attending the therapy. During the evaluation, Bradford's affect was very serious. It is possible that he continues to suffer from Dysthymia, given his affect and given his reported anger problems. Bradford has been through quite a bit in his life, and not only has been neglected, but has reportedly witnessed domestic violence. There were also numerous referrals to Child Protective Services regarding abuse and neglect of his siblings and him when he lived with his mother.

Bradford's test results on the **WISC-III** indicate that he is functioning intellectually in the mentally retarded range, while his scores on the **WRAT-3** indicate that he is reading and spelling at the second grade level, and is performing arithmetic at the third grade level. Bradford is functioning academically and intellectually below his peers in all areas. Bradford has a history of being in Special Education classes in school, and his foster mother indicated that he requires a small classroom environment. During the evaluation, Bradford displayed deficits in both receptive and expressive communication. For example, he appeared to have difficulty understanding what was said to him, and so many things were re-explained to him in simpler terms. He also had great difficulty expressing himself adequately and was very difficult to understand. For example, he spoke unclearly, tended to run words together, and his thinking was very concrete. Records indicate that Bradford is a client of Alta California Regional Center.

With regard to the charges against Bradford, he admitted to hitting the victim in this case. Bradford described his behavior as being "self-defense," given the boy had pushed or hit him a number of times in the days prior to Bradford hitting the boy. Bradford reported that he thought it was "the right thing" to do because of the boy's behavior. The present results suggest that Bradford's thinking tends to be very concrete and that he likely had difficulty reasoning the situation

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out. Bradford reported, for example, that he had talked a staff person at school about the conflict with the boy, and his foster mother indicated that he had also talked to his therapist about this situation. [REDACTED] indicated that Bradford does tend to go to adults for advice and help when he is in a difficult situation, however he nevertheless had difficulty understanding how to appropriately resolve the situation and hit the boy. Apparently the tension between the two boys had been escalating over a few days, there had been words exchanged, and some hitting and pushing had taken place. The present results suggest that Bradford used poor judgment by actually hitting the boy in this situation, however given his concrete thinking, the present results suggest that he likely had difficulty reasoning out the situation and responding appropriately. Additionally, his history of being exposed to domestic violence likely contributed to his tendency to act out violently.

The present results suggest that Bradford is not competent to stand trial on the present charges. For example, Bradford had great difficulty understanding even basic concepts, and he reported that he did not understand what was going on in Court. Bradford clearly understands what he has been charged with, however he possesses an inadequate understanding of the roles of various judicial participants, court procedures, the different ways that he could plead in his case, what a trial is, or what being on probation would mean. He does appear to be motivated to help himself, however he tended to make a poor historian and had difficulty revealing information regarding his past and the situation which lead to him being arrested. When asked what evidence he had to help him with his case, he stated that he did not know and that his foster mother had it. It is clear that Bradford does not possess an adequate understanding of how he may or may not help himself in his case. The present results also suggest that he does not possess the capacity to testify.

In sum, the results of the present psychological evaluation reveal an adolescent with a history of severe neglect and abuse, as well as Dysthymia, who is exhibiting significant cognitive and intellectual deficits. The present results suggest that Bradford is not competent to stand trial on the present charges.

It is recommended that Bradford continue to participate in psychotherapy designed to assist him in learning to express his feelings and behavior appropriately. His treatment should help him reframe past abuse and neglect so that it has less of an impact upon his current functioning. It should be presented at a very basic level so that he is able to comprehend the information presented to him. His treatment should also help him develop social skills so that he is better able to relate to his peers and others, and so he is able to make sense out of social interactions.

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Thank you for the opportunity to evaluate [REDACTED] for the Sacramento County Public Defender's Office, Juvenile Division. I hope this report has been useful to you, and please do not hesitate to call if you have any questions or if I can be of further assistance.

Respectfully,

[REDACTED]  
Licensed Psychologist

DS:vm

[REDACTED] - 1017 Sac Juv